

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name MADDEN GIFFORD M
(Last) (First) (Initial)

Prisoner Number J-63532

Institutional Address POST OFFICE BOX 689, SOLEDAD, CA, 93960

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GIFFORD M. MADDEN
(Enter the full name of plaintiff in this action.)

vs.

BEN CURRY, Warden,
BOARD OF PAROLE HEARINGS AND IT'S
AGENTS INDIVIDUALLY AND IN THEIR
OWN CAPACITY. et al.....
(Enter the full name of respondent(s) or jailor in this action)

Case No. _____
(To be provided by the clerk of court)

**PETITION FOR A WRIT
OF HABEAS CORPUS**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

- 1 -

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

ORANGE COUNTY, SUPERIOR COURT SANTA ANA, CALIFORNIA

Court Location

(b) Case number, if known G039448

(c) Date and terms of sentence DECEMBER OF 1993 - 19 years to life

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes XXX No

Where?

Name of Institution: CORRECTIONAL TRAINING FACILITY

Address: POST OFFICE BOX 689, SOLEDAD, CA. 93960

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

(2nd,) SECOND DEGREE MURDER PENAL CODE 187

3. Did you have any of the following?

Arraignment: Yes XX No
 Preliminary Hearing: Yes XX No
 Motion to Suppress: Yes XX No

4. How did you plead?

Guilty Not Guilty XX Nolo Contendere
 Any other plea (specify) N/A

5. If you went to trial, what kind of trial did you have?

Jury XX Judge alone Judge alone on a transcript

6. Did you testify at your trial?

Yes XX No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes XX No
 (b) Preliminary hearing Yes XX No
 (c) Time of plea Yes XX No
 (d) Trial Yes XX No
 (e) Sentencing Yes XX No
 (f) Appeal Yes XX No
 (g) Other post-conviction proceeding Yes XX No

8. Did you appeal your conviction?

Yes XX No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes XX No

Year: 1995 Result: DENIED

Supreme Court of California Yes XX No

Year: 1999 Result: DENIED

Any other court Yes No

Year: Result: N/A

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No XX

(c) Was there an opinion? Yes _____ No XX

(d) Did you seek permission to file a late appeal under Rule 31(a)?
Yes _____ No XX

If you did, give the name of the court and the result:

NOT APPLICABLE

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes _____ No XX

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28

U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: NOT APPLICABLE

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. NOT APPLICABLE

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

II. Name of Court: NOT APPLICABLE

Type of Proceeding: _____

Grounds raised (Be brief but specific):

NOT APPLICABLE

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

III. Name of Court: _____ NOT APPLICABLE

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____ NOT APPLICABLE

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

IV. Name of Court: _____ NOT APPLICABLE

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____ NOT APPLICABLE

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes _____ No XXX

Name and location of court: _____ NOT APPLICABLE

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Penal code §3041 creates a liberty interest protected by the federal
6 Due Process Clause. US Constitution 5th & 14th Amendments.

7 Supporting Facts: CALIFORNIA PENAL CODE 3041 CREATES A CONSTITUTIONALLY
8 PROTECTED LIBERTY INTEREST THAT THE BOARD OF PAROLE HEARINGS SHALL
9 RELEASE PETITIONER WHEN CERTAIN PREREQUISITE CONDITIONS ARE MET; WHICH
10 WERE MET IN THIS CASE. FAILURE TO SET PETITIONER A PAROLE DATE HAS
11 VIOLATED MY DUE PROCESS RIGHTS. THE BOARD'S UNSUITABILITY

12 DETERMINATION WAS UNSUPPORTED BY EVIDENCE THAT WOULD BRING PETITIONERS
13 CASE WITHIN THE TERMS OF PENAL CODE 3041(B).

14 Supporting Facts: THE CALIFORNIA LEGISLATURE HAS SPECIFIED THAT IF THE
15 GRAVITY OF THE COMMITMENT OFFENSE SHOWS THAT THE INDIVIDUAL WOULD BE A
16 THREAT TO PUBLIC SAFETY THEN THE BOARD MAY DETERMINE THAT THE INDIVIDUAL
17 IS UNSUITABLE FOR PAROLE. THE BOARD'S CONTINUED DENIAL OF A PAROLE
18 DATE BASED ON THE OFFENSE VIOLATES PETITIONERS DUE PROCESS.

19 Claim Three: THE FINDINGS MADE AND REASONS PROFFERED BY THE BOARD ARE
20 AN ABUSE OF DISCRETION CONFERRED UPON THE BOARD BY THE LEGISLATURE.

21 Supporting Facts: THE BOARD'S DISCRETION IS ABUSED BY FACTUAL FINDINGS
22 THAT ARE NOT SUPPORTED BY SOME EVIDENCE. THE BOARD MUST SET A PRIMARY
23 TERM BASED ON PETITIONER'S INDIVIDUAL CULPABILITY AND PROPORTIONATE
24 TO HIS OFFENSE WHICH IT FAILED TO DO IN THIS CASE.

25 If any of these grounds was not previously presented to any other court, state briefly which
26 grounds were not presented and why:

27 ALL GROUNDS PRESENTED HEREIN HAVE BEEN EXHAUSTED IN THE CALIFORNIA STATE
28 COURTS.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 MCQUILLION V. DUNCAN, 306 F.3d 895, BOARD OF PARDONS V. ALLEN, 482 U.S. 369

5 GREENHOLTZ V NEBRASKA PENAL INMATES 442 U.S. 1, BIGGS V TERHUNE, 334 F.3d

6 910, IRONS V CAREY 479 F.3d 658, SASS V CAL. BD. OF PRISON TERMS 461 F.3d

7 1123.
Do you have an attorney for this petition? Yes _____ No XX

8 If you do, give the name and address of your attorney:

9 NOT APPLICABLE

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on 21 March 2008

14 Date

Stifford Madden
Signature of Petitioner

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18
19
20 (Rev. 6/02)

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 Santa Ana CA 92704

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